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## TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

Application Number 09/838,652

Filing Date April 19, 2001

First Named Inventor David Kyle

Art Unit 2155

Examiner Name Asad M. Nawaz

Attorney Docket Number TT4390

### ENCLOSURES (Check all that apply)

- |   |   |  |
|---|---|--|
| <input checked="" type="checkbox"/> Fee Transmittal Form                  | <input type="checkbox"/> Drawing(s)                                       | <input type="checkbox"/> After Allowance Communication to TC                                       |
| <input type="checkbox"/> Fee Attached                                     | <input type="checkbox"/> Licensing-related Papers                         | <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences                |
| <input type="checkbox"/> Amendment/Reply                                  | <input type="checkbox"/> Petition   | <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) |
| <input type="checkbox"/> After Final                                      | <input type="checkbox"/> Petition to Convert to a Provisional Application | <input type="checkbox"/> Proprietary Information   |
| <input type="checkbox"/> Affidavits/declaration(s)                        | <input type="checkbox"/> Power of Attorney, Revocation                    | <input type="checkbox"/> Status Letter   |
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#### Remarks

Please find enclosed Appellants' Third Appeal Brief. Please note that the fees paid for the first and second Appeal Briefs are applied to this third appeal pursuant to M.P.E.P. Section 1204.01.

### SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Winstead Sechrest & Minick P.C.		
Signature			
Printed name	Robert A. Voigt, Jr.		
Date	November 2, 2006	Reg. No.	47,159

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I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

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This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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# FEE TRANSMITTAL

## For FY 2006

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$)

**Complete if Known**

Application Number	09/838,652
Filing Date	April 19, 2001
First Named Inventor	David Kyle
Examiner Name	Asad M. Nawaz
Art Unit	2155
Attorney Docket No.	TT4390

**METHOD OF PAYMENT** (check all that apply)☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): \_\_\_\_\_☒ Deposit Account Deposit Account Number: 23-2426 Deposit Account Name: Winstead Sechrest & ...

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, **except for the filing fee**☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**FEE CALCULATION** (All the fees below are due upon filing or may be subject to a surcharge.)**1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

**2. EXCESS CLAIM FEES****Fee Description**

	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180

**Total Claims**      **Extra Claims**      **Fee (\$)**      **Fee Paid (\$)**- 20 or HP = \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_  
HP = highest number of total claims paid for, if greater than 20.**Indep. Claims**      **Extra Claims**      **Fee (\$)**      **Fee Paid (\$)**- 3 or HP = \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_  
HP = highest number of independent claims paid for, if greater than 3.**3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

**Total Sheets**      **Extra Sheets**      **Number of each additional 50 or fraction thereof**      **Fee (\$)**      **Fee Paid (\$)**

- 100 = \_\_\_\_\_ / 50 = \_\_\_\_\_ (round up to a whole number) x \_\_\_\_\_ = \_\_\_\_\_

**4. OTHER FEE(S)**

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): Filing a Brief in Support of Appeal      **Fees Paid (\$)**      0.00**SUBMITTED BY**

Signature		Registration No. (Attorney/Agent) 47,159	Telephone 512.370.2832
Name (Print/Type)	Robert A. Voigt, Jr.		Date November 2, 2006

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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TT4390

PATENT

- 1 -

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: Kyle et al.  
Serial No.: 09/838,652  
Filed: April 19, 2001  
Group Art Unit: 2152  
Before the Examiner: Nguyen, Trong  
Title: DETERMINING LOGON STATUS IN A BROADBAND  
NETWORK SYSTEM AND AUTOMATICALLY  
RESTORING LOGON CONNECTIVITY

**THIRD APPEAL BRIEF**

Mail Stop Appeal Brief-Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

I. REAL PARTY IN INTEREST

The real party in interest is Advanced Micro Devices, Inc., which is the assignee of the entire right, title and interest in the above-identified patent application.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants, Appellants' legal representative or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-26 and 40-52 are pending in the Application. Claims 27-39 were cancelled. Claims 1-26 and 40-52 stand rejected. Claims 1-26 and 40-52 are appealed.

#### IV. STATUS OF AMENDMENTS

Appellants have not submitted any amendments following receipt of the final rejection with a mailing date of March 24, 2005.

#### V. SUMMARY OF CLAIMED SUBJECT MATTER

##### Independent Claim 1:

In one embodiment of the present invention, a method for automatically restoring logon connectivity in a network system may comprise the step of establishing a first connection between a client and an Internet gateway. Specification, page 13, lines 1-14; Specification, page 18, claim 1, lines 1-3; Figure 4, step 401. The method may further comprise checking status of the first connection by issuing a first request to the Internet gateway to access a web server utilizing a protocol blocked under a logged off status. Specification, page 13, lines 15-21; Specification, page 18, claim 1, lines 4-6; Figure 4, step 402. The method may further comprise determining whether the web server is accessed from the first request. Specification, page 13, line 22 – page 14, line 2; Specification, page 18, claim 1, line 7; Figure 4, step 403. The method may further comprise automatically attempting to establish a second connection to the Internet gateway if the web server was not accessed from the first request. Specification, page 14, line 25 – page 15, line 17, Specification, page 18, claim 1, lines 8-9; Figure 4, step 405.

##### Independent Claim 14:

In another embodiment, a system comprises a processor. Specification, page 10, line 16 – page 11, line 22; Figure 3, element 310. The system may further comprise a memory unit storing a computer program operable for automatically restoring logon connectivity in a network system. Specification, page 10, line 16 – page 11, line 22; Figure 3, elements 314, 350. The system may further comprise an

input mechanism. Specification, page 10, line 16 – page 11, line 22; Figure 3, elements 326, 328. The system may further comprise an output mechanism. Specification, page 10, line 16 – page 11, line 22; Figure 3, elements 330, 338. The system may further comprise a bus system coupling the processor to the memory unit, input mechanism, and output mechanism. Specification, page 10, line 16 – page 11, line 22; Figure 3, element 312. The computer program may comprise the programming step of establishing a first connection between one or more clients and an Internet gateway. Specification, page 10, line 16 – page 11, line 22; Specification, page 13, lines 1-14; Figure 3, element 350; Figure 4, step 401. The computer program may further comprise the programming step of checking status of the first connection by issuing a first request to the Internet gateway to access a web server utilizing a protocol blocked under a logged off status. Specification, page 10, line 16 – page 11, line 22; Specification, page 13, lines 15-21; Figure 3, element 350; Figure 4, step 402. The computer program may further comprise the programming step of determining whether the web server is accessed from the first request. Specification, page 10, line 16 – page 11, line 22; Specification, page 13, line 22 – page 14, line 2; Figure 3, element 350; Figure 4, step 403. The computer program may further comprise the programming step of automatically attempting to establish a second connection between one or more clients and the Internet gateway if the web server was not accessed from the first request. Specification, page 10, line 16 – page 11, line 22; Specification, page 14, line 25 – page 15, line 17, Figure 3, element 350; Figure 4, step 405.

Independent Claim 40:

In another embodiment, a computer program product having a computer readable medium having computer program logic recorded thereon for automatically restoring logon connectivity may comprise programming operable for establishing a first connection between a client and an Internet gateway. Specification, page 10, line 16 – page 11, line 22; Specification, page 13, lines 1-14; Figure 3, element 350; Figure 4, step 401. The computer program product may further comprise

programming operable for checking status of the first connection by issuing a first request to the Internet gateway to access a web server utilizing a protocol blocked under a logged off status. Specification, page 10, line 16 – page 11, line 22; Specification, page 13, lines 15-21; Figure 3, element 350; Figure 4, step 402. The computer program may further comprise programming operable for determining whether the web server is accessed from the first request. Specification, page 10, line 16 – page 11, line 22; Specification, page 13, line 22 – page 14, line 2; Figure 3, element 350; Figure 4, step 403. The computer program may further comprise programming operable for automatically attempting to establish a second connection to the Internet gateway if the web server was not accessed from the first request. Specification, page 10, line 16 – page 11, line 22; Specification, page 14, line 25 – page 15, line 17, Figure 3, element 350; Figure 4, step 405.

#### VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1, 14 and 40 stand rejected under 35 U.S.C. §102(b) as being anticipated by Raguseo (GB 2333671 A). Claims 1-10, 14-23 and 40-49 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Khanna (U.S. Patent No. 5,978,849) in view of Byrne (U.S. Patent No. 6,229,787). Claims 11-13, 24-26 and 50-52 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Khanna in view of Byrne and in further view of Official Notice.

#### VII. ARGUMENT

##### A. Claims 1, 14 and 40 are improperly rejected under 35 U.S.C. §102(b).

The Examiner has rejected claims 1, 14 and 40 under 35 U.S.C. §102(b) as being anticipated by Raguseo. Office Action (8/11/2006), page 3. Appellants respectfully traverse these rejections for at least the reasons stated below.

For a claim to be anticipated under 35 U.S.C. §102, each and every claim limitation must be found within the cited prior art reference and arranged as required by the claim. M.P.E.P. §2131.

Appellants respectfully assert that Raguseo does not disclose "establishing a first connection between a client and Internet gateway" as recited in claim 1 and similarly in claims 14 and 40. The Examiner cites page 3, lines 30-40 of Raguseo as disclosing the above-cited claim limitation. Office Action (8/11/2006), page 3. Appellants respectfully traverse and assert that Raguseo instead discloses means for establishing a communication between two nodes using a first of said plurality of communication protocols. Page 3, lines 34-35. While Raguseo discloses establishing a communication between two nodes, there is no language in Raguseo that suggests that one of the nodes is an Internet gateway. Thus, Raguseo does not disclose all of the limitations of claims 1, 14 and 40, and thus Raguseo does not anticipate claims 1, 14 and 40. M.P.E.P. §2131.

Appellants further assert that Raguseo does not disclose "checking status of said first connection by issuing a first request to said Internet gateway to access a web server utilizing a protocol blocked under a logged off status" as recited in claim 1 and similarly in claims 14 and 40. The Examiner cites page 3, lines 30-40; page 5, lines 18-25; and page 6, lines 1-10 of Raguseo as disclosing the above-cited claim limitation. Office Action (8/11/2006), page 3. Appellants respectfully traverse.

Raguseo instead discloses means for detecting a fault in the communication between said two nodes. Page 3, lines 36-37. Raguseo further discloses that in the case of NFS and its protocol TCP/IP, for example, if the server DNS 213 has a hardware problem, communication between node 201 and node 207 is no longer possible. Page 5, lines 19-21. Raguseo additionally discloses that the same happens in the case of NetWare if server SAP 215 crashes down. Page 5, lines 21-22. Furthermore, Raguseo discloses that if disconnection is detected, the association of

the remote resource "\server\remote\_resource" with its logical name "x:" is cancelled.  
Page 6, lines 6-8.

There is no language in the cited passages that discloses checking the status of the connection between a client and an Internet gateway. Neither is there any language in the cited passages that discloses checking the status of the connection between a client and an Internet gateway by issuing a request to the Internet gateway. Neither is there any language in the cited passages that discloses checking the status of the connection between a client and an Internet gateway by issuing a request to the Internet gateway to access a web server. Neither is there any language in the cited passages that discloses checking the status of the connection between a client and an Internet gateway by issuing a request to the Internet gateway to access a web server utilizing a protocol blocked under a logged off status. Thus, Raguseo does not disclose all of the limitations of claims 1, 14 and 40, and thus Raguseo does not anticipate claims 1, 14 and 40. M.P.E.P. §2131.

Appellants further assert that Raguseo does not disclose "determining whether said web server is accessed from said first request" as recited in claim 1 and similarly in claims 14 and 40. The Examiner cites page 3, lines 30-40 and page 6, lines 1-10 of Raguseo as disclosing the above-cited claim limitation. Office Action (8/11/2006), page 4. Appellants respectfully traverse.

As stated above, Raguseo instead discloses means for detecting a fault in the communication between said two nodes. Page 3, lines 36-37. Additionally, Raguseo discloses that if disconnection is detected, the association of the remote resource "\server\remote\_resource" with its logical name "x:" is cancelled. Page 6, lines 6-8.

There is no language in the cited passages that discloses determining whether a web server is accessed. Neither is there any language in the cited passages that discloses determining whether a web server is accessed from the first request (referring to the request issued to the Internet gateway to access the web server



utilizing a protocol blocked under a logged off status). Thus, Raguseo does not disclose all of the limitations of claims 1, 14 and 40, and thus Raguseo does not anticipate claims 1, 14 and 40. M.P.E.P. §2131.

Appellants further assert that Raguseo does not disclose "automatically attempting to establish a second connection to said Internet gateway if said web server was not accessed from said first request" as recited in claim 1 and similarly in claims 14 and 40. The Examiner cites page 3, lines 30-40; page 5, lines 18-30; and page 6, lines 1-10 of Raguseo as disclosing the above-cited claim limitation. Office Action (8/11/2006), page 3. Appellants respectfully traverse.

As stated above, Raguseo instead discloses means for automatically re-establishing the communication between said two nodes using a second of said plurality of available communication protocols. Page 3, lines 38-40. Raguseo further discloses that in the case of NFS and its protocol TCP/IP, for example, if the server DNS 213 has a hardware problem, communication between node 201 and node 207 is no longer possible. Page 5, lines 19-21. Raguseo additionally discloses that the same happens in the case of NetWare if server SAP 215 crashes down. Page 5, lines 21-22. Furthermore, Raguseo discloses that if disconnection is detected, the association of the remote resource "\\server\\remote\_resource" with its logical name "x:" is cancelled. Page 6, lines 6-8.

There is no language in the cited passages that discloses automatically attempting to establish a second connection to the Internet gateway. Neither is there any language in the cited passages that discloses automatically attempting to establish a second connection to the Internet gateway if the web server was not accessed from the first request (referring to the request issued to the Internet gateway to access the web server utilizing a protocol blocked under a logged off status). Thus, Raguseo does not disclose all of the limitations of claims 1, 14 and 40, and thus Raguseo does not anticipate claims 1, 14 and 40. M.P.E.P. §2131.

As a result of the foregoing, Appellants respectfully assert that not each and every claim limitation was found within Raguseo, and thus claims 1, 14 and 40 are not anticipated by Raguseo. M.P.E.P. §2131.

B. Claims 1-10, 14-23 and 40-49 are not properly rejected under 35 U.S.C. §103(a).

The Examiner has rejected claims 1-10, 14-23 and 40-49 under 35 U.S.C. §103(a) as being unpatentable over Khanna in view of Byrne. Office Action (8/11/2006), page 4. Appellants respectfully traverse these rejections for at least the reasons stated below.

1. Khanna and Byrne, taken singly or in combination, do not teach or suggest the following claim limitations.
  - a. Claims 1, 14 and 40 are patentable over Khanna in view of Byrne.

Appellants respectfully assert that Khanna and Byrne, taken singly or in combination, do not teach or suggest "establishing a first connection between a client and an Internet gateway" as recited in claim 1 and similarly in claims 14 and 40. The Examiner cites column 7, lines 42-57 of Khanna as teaching the above-cited claim limitation. Office Action (8/11/2006), page 4. Appellants respectfully traverse and assert that Khanna instead teaches that a server receives a new SYN segment from a client requesting a connection with the server. Column 7, lines 44-46. Hence, Khanna teaches that a server receives a request from a client to connect it with the server. However, the claim limitation recites an "Internet gateway." The Examiner must provide a basis in fact and/or technical reasoning to support the assertion that a server, as taught in Khanna, is an Internet gateway. *See Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that must make clear that a server, as taught in Khanna, is an Internet gateway, and that it be so recognized for persons of ordinary skill. *See In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since

the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 1, 14 and 40. M.P.E.P. § 2143.

Appellants further assert that Khanna and Byrne, taken singly or in combination, do not teach or suggest "checking status of said first connection by issuing a first request to said Internet gateway to access a web server utilizing a protocol blocked under a logged off status" as recited in claim 1 and similarly in claims 14 and 40. The Examiner cites column 7, lines 20-32 of Byrne as teaching the above-cited claim limitation. Office Action (8/11/2006), page 5. Appellants respectfully traverse and assert that Byrne instead teaches recognizing a first node coupled to a backbone of a data communications network and in response to an update message transmitted according to a private network-to-network interface (PNNI) protocol within the network, that a first end-to-end connection between the first node and a second node coupled to the backbone of the data communications network has failed; and continuing communications between the first node and the second node via a second end-to-end connection established at approximately the same time as the first end-to-end connection and prior to the failure of the first end-to-end connection." Column 7, lines 20-32. There is no language in the cited passage that teaches checking status of the first connection (referring to the connection between a client and an Internet gateway). Neither is there any language in the cited passage that teaches checking status of the first connection by issuing a request to the Internet gateway to access a web server. Neither is there any language in the cited passage that teaches checking status of the first connection by issuing a request to the Internet gateway to access a web server utilizing a protocol blocked under a logged off status. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 1, 14 and 40, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Appellants further assert that Khanna and Byrne, taken singly or in combination, do not teach or suggest "determining whether said web server is accessed from said first request" as recited in claim 1 and similarly in claims 14 and 40. The Examiner cites column 7, lines 46-62 of Khanna as teaching the above-cited claim limitation. Office Action (8/11/2006), page 4. Appellants respectfully traverse. As stated above, Khanna instead teaches that the TW\_TCB list is searched for a connection with the client sending the SYN segment and for the same server port. Column 7, lines 47-49. Khanna further teaches that a determination is made whether a connection with the client sending the SYN segment and for the same server port is within the TW\_TCB list. Column 7, lines 50-52. Khanna further teaches that if a connection is not located in the TW\_TCB, a new connection is created by creating new control blocks. Column 7, lines 52-54. Hence, Khanna teaches determining whether a connection with the client sending the SYN segment and for the same server port is within the TW\_TCB list. There is no language in the cited passage that teaches determining whether a web server is accessed from the request (referring to the request to the Internet gateway to access a web server utilizing a protocol blocked under a logged off status). Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 1, 14 and 40, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Appellants further assert that Khanna and Byrne, taken singly or in combination, do not teach or suggest "automatically attempting to establish a second connection to said Internet gateway if said web server was not accessed from said first request" as recited in claim 1 and similarly in claims 14 and 40. The Examiner cites column 7, lines 46-57 and Figure 5 of Khanna as teaching the above-cited claim limitation. Office Action (8/11/2006), page 5. Appellants respectfully traverse. As stated above, Khanna instead teaches that the TW\_TCB list is searched for a connection with the client sending the SYN segment and for the same server port. Column 7, lines 47-49. Khanna further teaches that a determination is made whether

a connection with the client sending the SYN segment and for the same server port is within the TW\_TCB list. Column 7, lines 50-52. Khanna further teaches that if a connection is not located in the TW\_TCB, a new connection is created by creating new control blocks. Column 7, lines 52-54. Hence, Khanna teaches that a new connection is created by creating new control blocks if the connection with the client sending the SYN segment and for the same server port is not within the TW\_TCB list. There is no language in the cited passage that teaches automatically attempting to establish a second connection to the Internet gateway. Neither is there any language in the cited passage that teaches automatically attempting to establish a second connection to the Internet gateway if a web server was not accessed from the request (referring to the request to the Internet gateway to access a web server utilizing a protocol blocked under a logged off status). Instead, Khanna simply teaches creating a new connection by creating new control blocks if the connection with the client sending the SYN segment and for the same server port is not within the TW\_TCB list. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 1, 14 and 40, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

- b. Claims 2-10, 15-23 and 41-49 are patentable over Khanna in view of Byrne for at least the reasons that claims 1, 14 and 40, respectively, are patentable over Khanna in view of Byrne.

Claims 2-10 depend from independent claim 1, and hence claims 2-10 are patentable over Khanna in view of Byrne for at least the reasons that claim 1 is patentable over Khanna in view of Byrne as discussed above. Claims 15-23 depend from independent claim 14, and hence claims 15-23 are patentable over Khanna in view of Byrne for at least the reasons that claim 14 is patentable over Khanna in view of Byrne as discussed above. Claims 41-49 depend from independent claim 40, and hence claims 41-49 are patentable over Khanna in view of Byrne for at least the reasons that claim 40 is patentable over Khanna in view of Byrne as discussed above.

- c. Claims 2, 15 and 41 are patentable over Khanna in view of Byrne.

Appellants respectfully assert that Khanna and Byrne, taken singly or in combination, do not teach or suggest "wherein if said web server was accessed from said first request, then the method further comprises the steps of: waiting for a first period of time" as recited in claim 2 and similarly in claims 15 and 41. The Examiner cites column 6, lines 56-67 of Khanna as teaching the above-cited claim limitation. Office Action (8/11/2006), page 5. Appellants respectfully traverse and assert that Khanna instead teaches that the server end of a closed connection remains in TIME-WAIT state for a time equal to two times the maximum segment lifetime (2\*MSL). Column 6, lines 48-60. Khanna further teaches that the MSL is defined to be thirty seconds. Column 6, lines 60-61. Hence, Khanna teaches implementing a time-wait state for a time equal to one minute. However, Khanna does not teach waiting for a period of time if the web server was accessed from the first request (referring to the request to the Internet gateway to access a web server utilizing a protocol blocked under a logged off status). Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 2, 15 and 41, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Appellants further assert that Khanna and Byrne, taken singly or in combination, do not teach or suggest "wherein if said web server was accessed from said first request, then the method further comprises the steps of: checking status of said first connection by issuing a second request to said Internet gateway to access said web server utilizing said protocol blocked under said logged off status" as recited in claim 2 and similarly in claims 15 and 41. The Examiner cites column 7, line 46 – column 8, line 20 of Khanna as teaching the above-cited claim limitation. Office Action (8/11/2006), page 5. Appellants respectfully traverse.

As stated above, Khanna instead teaches that the TW\_TCB list is searched for a connection with the client sending the SYN segment and for the same server port. Column 7, lines 47-49. Khanna further teaches that a determination is made whether a connection with the client sending the SYN segment and for the same server port is within the TW\_TCB list. Column 7, lines 50-52. Khanna further teaches that if a connection is not located in the TW\_TCB, a new connection is created by creating new control blocks. Column 7, lines 52-54. Hence, Khanna teaches determining whether a connection with the client sending the SYN segment and for the same server port is within the TW\_TCB list.

There is no language in the cited passage that teaches checking the status of the first connection by issuing a second request to the Internet gateway. Neither is there any language in the cited passage that teaches checking the status of the first connection by issuing a second request to the Internet gateway if a web server was accessed from the first request (referring to the request to the Internet gateway to access a web server utilizing a protocol blocked under a logged off status). Neither is there any language in the cited passage that teaches checking the status of the first connection by issuing a second request to the Internet gateway to access the web server utilizing the protocol blocked under the logged off status if the web server was accessed from the first request. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 2, 15 and 41, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

d. Claims 3, 16 and 42 are patentable over Khanna in view of Byrne.

Appellants respectfully assert that Khanna and Byrne, taken singly or in combination, do not teach or suggest "wherein upon said attempting to establish said connection to said Internet gateway the method further comprises the step of: waiting for a second period of time, wherein said second period of time is less than said first

period of time; and checking status of said attempted second connection by issuing a third request to said Internet gateway to access said web server utilizing said protocol blocked under said logged off status" as recited in claim 3 and similarly in claims 16 and 42. The Examiner cites column 6, line 56 – column 7, line 30 of Khanna as teaching the above-cited claim limitation. Office Action (8/11/2006), page 6.

Appellants respectfully traverse and assert that Khanna instead teaches that the server end of a closed connection remains in TIME-WAIT state for a time equal to two times the maximum segment lifetime (2\*MSL). Column 6, lines 48-60. Khanna further teaches that the MSL is defined to be thirty seconds. Column 6, lines 60-61. Hence, Khanna teaches implementing a time-wait state for a time equal to one minute.

There is no language in the cited passage that teaches waiting for a second period of time, where the second period of time is less than the first period of time. Neither is there any language in the cited passage that teaches waiting for a second period of time, where the second period of time is less than the first period of time upon attempting to establish a connection to the Internet gateway. Neither is there any language in the cited passage that teaches checking the status of an attempted second connection by issuing a third request to the Internet gateway to access a web server. Neither is there any language in the cited passage that teaches checking the status of an attempted second connection by issuing a third request to the Internet gateway to access a web server utilizing the protocol blocked under the logged off status. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 3, 16 and 42, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

- e. Claims 4, 17 and 43 are patentable over Khanna in view of Byrne.



Appellants respectfully assert that Khanna and Byrne, taken singly or in combination, do not teach or suggest "wherein said first connection is established by a first logon procedure" as recited in claim 4 and similarly in claims 17 and 43. The Examiner cites column 7, lines 42-46 of Khanna as teaching the above-cited claim limitation. Office Action (8/11/2006), page 6. Appellants respectfully traverse and assert that Khanna instead teaches that a server receives a new SYN segment from a client requesting a connection with the server. Column 7, lines 44-46. There is no language in the cited passage that teaches that the first connection is established by a logon procedure. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 4, 17 and 43, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

f. Claims 5, 18 and 44 are patentable over Khanna in view of Byrne.

Appellants respectfully assert that Khanna and Byrne, taken singly or in combination, do not teach or suggest "terminating said first logon procedure; and executing a second logon procedure" as recited in claim 5 and similarly in claims 18 and 44. The Examiner cites column 7, lines 4-9 and 46-62 of Khanna as teaching the above-cited claim limitation. Office Action (8/11/2006), page 6. Appellants respectfully traverse and assert that Khanna instead teaches that the TCB list is searched every time a TCP segment is received to find out which connection the TCP segment belongs to. Column 7, lines 4-6. Khanna further teaches that the TW\_TCB list is searched for a connection with the client sending the SYN segment and for the same server port. Column 7, lines 47-49. Khanna further teaches that a determination is made whether a connection with the client sending the SYN segment and for the same server port is within the TW\_TCB list. Column 7, lines 50-52. Khanna further teaches that if a connection is not located in the TW\_TCB, a new connection is created by creating new control blocks. Column 7, lines 52-54. There is no language in the cited passages that teaches terminating a logon procedure.

Neither is there any language in the cited passages that teaches executing a second logon procedure. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 5, 18 and 44, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

g. Claims 7, 20 and 46 are patentable over Khanna in view of Byrne.

Appellants respectfully assert that Khanna and Byrne, taken singly or in combination, do not teach or suggest "checking status of said attempted second connection by issuing a second request to said Internet gateway to access said web server utilizing said protocol blocked under said logged off status" as recited in claim 7 and similarly in claims 20 and 46. The Examiner cites column 7, line 46 – column 8, line 20 of Khanna as teaching the above-cited claim limitation. Office Action (8/11/2006), page 7. Appellants respectfully traverse. As stated above, Khanna instead teaches that the TW\_TCB list is searched for a connection with the client sending the SYN segment and for the same server port. Column 7, lines 47-49. Khanna further teaches that a determination is made whether a connection with the client sending the SYN segment and for the same server port is within the TW\_TCB list. Column 7, lines 50-52. Khanna further teaches that if a connection is not located in the TW\_TCB, a new connection is created by creating new control blocks. Column 7, lines 52-54. Hence, Khanna teaches determining whether a connection with the client sending the SYN segment and for the same server port is within the TW\_TCB list. There is no language in the cited passages that teaches checking the status of an attempted second connection by issuing a second request to an Internet gateway. Neither is there any language in the cited passages that teaches checking the status of an attempted second connection by issuing a second request to an Internet gateway to access a web server utilizing a protocol blocked under a logged off status. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 7, 20 and 46, since the Examiner is relying upon incorrect, factual

predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

h. Claims 8, 21 and 47 are patentable over Khanna in view of Byrne.

Appellants respectfully assert that Khanna and Byrne, taken singly or in combination, do not teach or suggest "determining whether said web server is accessed from said second request" as recited in claim 8 and similarly in claims 21 and 47. The Examiner cites column 7, lines 55-62 of Khanna as teaching the above-cited claim limitation. Office Action (8/11/2006), page 7. Appellants respectfully traverse and assert that Khanna instead teaches that if a connection is located in the TW\_TCB, the INPCB associated with the connection is removed from the TW\_TCB list and placed in the TCB list. Column 7, lines 55-57. There is no language in the cited passage that teaches determining whether a web server is accessed from the second request. Neither is there any language in the cited passage that teaches determining whether a web server is accessed from the second request where the second request is issued to the Internet gateway to check the status of an attempted connection to the Internet gateway. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 8, 21 and 47, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

i. Claims 9, 22 and 48 are patentable over Khanna in view of Byrne.

Appellants respectfully assert that Khanna and Byrne, taken singly or in combination, do not teach or suggest "wherein if said web server is accessed from said second request then the method further comprises the steps of: waiting for a second period of time, wherein said first period of time is less than said second period of time; and checking status of said attempted second connection by issuing a third request to said Internet gateway to access said web server utilizing said protocol

blocked under said logged off status" as recited in claim 9 and similarly in claims 22 and 48. The Examiner cites column 7, line 46 – column 8, line 20 of Khanna as teaching the above-cited claim limitation. Office Action (8/11/2006), page 7. Appellants respectfully traverse.

As stated above, Khanna instead teaches that the TW\_TCB list is searched for a connection with the client sending the SYN segment and for the same server port. Column 7, lines 47-49. Khanna further teaches that a determination is made whether a connection with the client sending the SYN segment and for the same server port is within the TW\_TCB list. Column 7, lines 50-52. Khanna further teaches that if a connection is not located in the TW\_TCB, a new connection is created by creating new control blocks. Column 7, lines 52-54. Hence, Khanna teaches determining whether a connection with the client sending the SYN segment and for the same server port is within the TW\_TCB list.

There is no language in the cited passage that teaches waiting for a second period of time, where the first period of time is less than the second period of time. Neither is there any language in the cited passage that teaches waiting for a second period of time, where the first period of time is less than the second period of time, if the web server is accessed from the second request. Neither is there any language in the cited passage that teaches checking the status of an attempted second connection by issuing a third request to an Internet gateway. Neither is there any language in the cited passage that teaches checking the status of an attempted second connection by issuing a third request to an Internet gateway to access the web server utilizing a protocol blocked under the logged off status. Neither is there any language in the cited passage that teaches checking the status of an attempted second connection by issuing a third request to an Internet gateway to access the web server utilizing a protocol blocked under the logged off status, if the web server is accessed from the second request. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 9, 22 and 48, since the Examiner is relying upon

incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

- j. Claims 10, 23 and 49 are patentable over Khanna in view of Byrne.

Appellants respectfully assert that Khanna and Byrne, taken singly or in combination, do not teach or suggest "wherein if said web server was not accessed from said second request then the method further comprises the step of: automatically attempting to establish a third connection to said Internet gateway" as recited in claim 10 and similarly in claims 23 and 49. The Examiner cites column 7, line 46 – column 8, line 20 of Khanna as teaching the above-cited claim limitation. Office Action (8/11/2006), page 7. Appellants respectfully traverse. As stated above, Khanna instead teaches that the TW\_TCB list is searched for a connection with the client sending the SYN segment and for the same server port. Column 7, lines 47-49. Khanna further teaches that a determination is made whether a connection with the client sending the SYN segment and for the same server port is within the TW\_TCB list. Column 7, lines 50-52. Khanna further teaches that if a connection is not located in the TW\_TCB, a new connection is created by creating new control blocks. Column 7, lines 52-54. Hence, Khanna teaches determining whether a connection with the client sending the SYN segment and for the same server port is within the TW\_TCB list. There is no language in the cited passage that teaches automatically attempting to establish a third connection to an Internet gateway. Neither is there any language in the cited passage that teaches automatically attempting to establish a third connection to an Internet gateway if the web server was not accessed from the second request. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 10, 23 and 49, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

2. Examiner's motivation for modifying Khanna to include the missing claim limitation of claims 1, 14 and 40 is insufficient to establish a *prima facie* case of obviousness.

Most if not all inventions arise from a combination of old elements. *See In re Rouffet*, 47 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998). Obviousness is determined from the vantage point of a hypothetical person having ordinary skill in the art to which the patent pertains. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998). Therefore, an Examiner may often find every element of a claimed invention in the prior art. *Id.* However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention. *See Id.* In order to establish a *prima facie* case of obviousness, the Examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998). That is, the Examiner must provide some suggestion or motivation, either in the references themselves, the knowledge of one of ordinary skill in the art, or, in some case, the nature of the problem to be solved, to modify the reference or to combine reference teachings. *See In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). Whether the Examiner relies on an express or an implicit showing, the Examiner must provide particular findings related thereto. *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000).

The Examiner admits that Khanna does not teach "checking status of said first connection by issuing a first request to said Internet gateway to access a web server utilizing a protocol blocked under a logged off status" as recited in claim 1 and similarly in claims 14 and 40. Office Action (8/11/2006), page 5. The Examiner asserts that Byrne teaches the above-cited claim limitation. *Id.* The Examiner's motivation for modifying Khanna with Byrne to include the above-cited claim limitation is "to make the system more robust." *Id.* The Examiner's motivation is

insufficient to establish a *prima facie* case of obviousness in rejecting claims 1-10, 14-23 and 40-49.

The Examiner has not provided a source for his motivation for modifying Khanna to include the above-cited claim limitation. The Examiner simply states "to make the system robust" as motivation for modifying Khanna to include the above-cited claim limitation. The motivation to modify Khanna must come from one of three possible sources: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art. *In re Rouffet*, 149 F.3d 1350, 1357, 47 U.S.P.Q.2d 1453, 1457-48 (Fed. Cir. 1998). Appellants respectfully request the Examiner to point out which of these sources is the source of the Examiner's motivation<sup>1</sup>. The Examiner has not provided any evidence that his motivation comes from any of these sources. Instead, the Examiner is relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 1-10, 14-23 and 40-49. *Id.*

The Examiner's motivation ("to make the system more robust") does not provide reasons, as discussed further below, that the skilled artisan, confronted with

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<sup>1</sup> Appellants feel it is very important for the Examiner to point out the source of the Examiner's motivation because it appears to Appellants that the Examiner is relying upon his own subjective opinion. The reason why the Federal Circuit (*In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2000)) has required the Examiner to provide objective evidence is because it may be easy to conclude that it would be obvious to combine references using hindsight reasoning even though there is no motivation or suggestion to do so. One can usually find a reason to combine references or make modifications to the main reference. If that were all it took, then all inventions would be obvious and not patentable. For example, assuming that a wheelbarrow had never been developed and a patentee had claimed a wheelbarrow, if the main reference taught a cart with a shallow box body, and the secondary reference taught two wheels, then the Examiner could simply assert, using hindsight reasoning without providing objective evidence, that the motivation for combining the two references is so that the cart could be moved from place to place. Hence, the patentee could not obtain a patent on the wheelbarrow (even though one has never been developed) based on the Examiner's rationale for combining the references. Yet the Examiner has not provided any evidence that a person of ordinary skill in the art would have combined the references to make such a product. In hindsight, everything is obvious. It seems that a question that should be asked is why the invention (in this example a wheelbarrow) was not already developed. If it is so obvious, then it would seem it already would have been developed.

the same problems as the inventor and with no knowledge of the claimed invention, would modify Khanna to include the missing claim limitation of claims 1, 14 and 40. Accordingly, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 1-10, 14-23 and 40-49. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998).

Khanna addresses the problem of reducing degradation of server performance caused by slow-start and facilitating the servicing of as many client requests as possible within the smallest amount of time. Column 2, lines 24-45. The Examiner has not provided any reasons as to why one skilled in the art would modify Khanna (which teaches reducing degradation of server performance caused by slow-start and facilitating the servicing of as many client requests as possible within the smallest amount of time) to check the status of the first connection by issuing a first request to the Internet gateway to access a web server utilizing a protocol blocked under a logged off status (missing claim limitation of Khanna). The Examiner's motivation ("to make the system more robust") does not provide such reasoning.

Why would the reason to modify Khanna (whose purpose is to reduce degradation of server performance caused by slow-start and facilitate the servicing of as many client requests as possible within the smallest amount of time) to check the status of the first connection by issuing a first request to the Internet gateway to access a web server utilizing a protocol blocked under a logged off status (missing claim limitation of Khanna) be to make the system more robust? There are many different modifications that can be made to Khanna's invention to make the system more robust. Why in particular would one skilled in the art make such modifications to Khanna? The Examiner states:

By checking the status of the connection directly with end-point via a request, one can avoid erroneous or outdated information within the TW\_TCB. Furthermore, the system would know the exact status of



the current node and avoids storing costly status lists constantly.  
Office Action (8/11/2006), page 5.

The TW\_TCB referred to by the Examiner refers to the list of connections in TIME-WAIT state. Column 7, lines 21-25. While checking the status of a connection that is listed in the list of connections in TIME-WAIT state may determine if there is erroneous or outdated information in the list, Khanna already teaches searching this list to see if there is a connection from the same client sending the SYN segment and to the same server port as the requested server port. Column 7, lines 24-26. Hence, Khanna already teaches a way of removing erroneous connections from the list (TW\_TCB List). The key question that must be asked is why would Khanna be modified to check the status of the connection by issuing a request to an Internet gateway to access a web server utilizing a protocol blocked under a logged off status (missing claim limitation). The Examiner has not addressed the issue at hand and neither does the Examiner's motivation provide a rationale for making such a modification to Khanna. Hence, the Examiner's motivation does not provide reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would modify Khanna to include the missing claim limitation of claims 1, 14 and 40. Accordingly, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 1-10, 14-23 and 40-49. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998).

- C. Claims 11-13, 24-26 and 50-52 are not properly rejected under 35 U.S.C. §103(a) as being unpatentable over Khanna in view of Byrne and in further view of Official Notice.

The Examiner has rejected claims 11-13, 24-26 and 50-52 under 35 U.S.C. §103(a) as being unpatentable over Khanna in view of Byrne and in further view of Office Notice. Office Action (8/11/2006), page 8. Appellants respectfully traverse these rejections for at least the reasons stated below.

As stated above, most if not all inventions arise from a combination of old elements. *See In re Rouffet*, 47 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998). Obviousness

is determined from the vantage point of a hypothetical person having ordinary skill in the art to which the patent pertains. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998). Therefore, an Examiner may often find every element of a claimed invention may often be found in the prior art. *Id.* However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention. *See Id.* In order to establish a *prima facie* case of obviousness, the Examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998). That is, the Examiner must provide some suggestion or motivation, either in the references themselves, the knowledge of one of ordinary skill in the art, or, in some case, the nature of the problem to be solved, to modify the reference or to combine reference teachings. *See In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). Whether the Examiner relies on an express or an implicit showing, the Examiner must provide particular findings related thereto. *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000).

The Examiner admits that Khanna does not teach a protocol that is a HyperText Protocol, as recited in claim 11 and similarly in claims 24 and 50. Office Action (8/11/2006), page 8. The Examiner further admits that Khanna does not teach a protocol that is a file transfer protocol, as recited in claim 12 and similarly in claims 25 and 51. *Id.* The Examiner further admits that Khanna does not teach a protocol that is a telnet protocol, as recited in claim 13 and similarly in claims 26 and 52. *Id.* The Examiner modifies Khanna to include the above-cited claim limitations "because Khanna essentially teaches content sharing/transmission via online communications protocols like TCP to accomplish a similar task." Office Action (8/11/2006), pages 8-9. The Examiner's motivation is insufficient to establish a *prima facie* case of obviousness in rejecting claims 11-13, 24-26 and 50-52.

The Examiner has not provided a source for his motivation for modifying Khanna to include the above-cited claim limitations. The Examiner simply states "because Khanna essentially teaches content sharing/transmission via online communications protocols like TCP to accomplish a similar task" as motivation for modifying Khanna to include the above-cited claim limitations. The motivation to modify Khanna must come from one of three possible sources: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art. *In re Rouffet*, 149 F.3d 1350, 1357, 47 U.S.P.Q.2d 1453, 1457-48 (Fed. Cir. 1998). The Examiner has not provided any evidence that his motivation comes from any of these sources. Instead, the Examiner is relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 11-13, 24-26 and 50-52. *Id.*

Furthermore, the Examiner's motivation ("because Khanna essentially teaches content sharing/transmission via online communications protocols like TCP to accomplish a similar task") does not provide reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would modify Khanna to include the missing claim limitations of claims 11-13, 24-26 and 50-52. While Khanna may discuss using TCP, that in and of itself does not provide a reason that a person skilled in the art would modify Khanna (whose purpose is to reduce degradation of server performance caused by slow-start and facilitate the servicing of as many client requests as possible within the smallest amount of time) to issue a request utilizing either a HyperText protocol, a file transfer protocol or a telnet protocol that is blocked under a logged off status. Hence, the Examiner's motivation does not provide reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would modify Khanna to include the missing claim limitation of claims 11-13, 24-26 and 50-52. Accordingly, the Examiner has not presented a *prima facie* case

of obviousness for rejecting claims 11-13, 24-26 and 50-52. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998).

Furthermore, Appellants respectfully traverse the implied assertion that it is well known in the art to issue a request to an Internet gateway to access a web server utilizing a protocol, whether it is a HyperText Protocol, a file transfer protocol or a telnet protocol, blocked under a logged off status. Appellants respectfully note that the Examiner has not provided a reference (Appellants had previously requested such a reference) that teaches issuing a request to an Internet gateway to access a web server utilizing a protocol, whether it is a HyperText Protocol, a file transfer protocol or a telnet protocol, blocked under a logged off status pursuant to M.P.E.P. §2144.03.

VIII. CONCLUSION

For the reasons noted above, the rejections of claims 1-26 and 40-52 are in error. Appellants respectfully request reversal of the rejections and allowance of claims 1-26 and 40-52.

Respectfully submitted,

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**CLAIMS APPENDIX**

1. A method for automatically restoring logon connectivity in a network system comprising the steps of:

establishing a first connection between a client and an Internet gateway;

checking status of said first connection by issuing a first request to said Internet gateway to access a web server utilizing a protocol blocked under a logged off status;

determining whether said web server is accessed from said first request; and

automatically attempting to establish a second connection to said Internet gateway if said web server was not accessed from said first request.

2. The method as recited in claim 1, wherein if said web server was accessed from said first request then the method further comprises the steps of:

waiting for a first period of time; and

checking status of said first connection by issuing a second request to said Internet gateway to access said web server utilizing said protocol blocked under said logged off status.

3. The method as recited in claim 2, wherein upon said attempting to establish said second connection to said Internet gateway the method further comprises the step of:

waiting for a second period of time, wherein said second period of time is less than said first period of time; and

checking status of said attempted second connection by issuing a third request to said Internet gateway to access said web server utilizing said protocol blocked under said logged off status.

4. The method as recited in claim 1, wherein said first connection is established by a first logon procedure.

5. The method as recited in claim 4, wherein said step of attempting to establish said second connection comprises the steps of:
  - terminating said first logon procedure; and
  - executing a second logon procedure.
6. The method as recited in claim 5 further comprising the step of:
  - waiting for a first period of time.
7. The method as recited in claim 6 further comprising the step of:
  - checking status of said attempted second connection by issuing a second request to said Internet gateway to access said web server utilizing said protocol blocked under said logged off status.
8. The method as recited in claim 7 further comprising the step of:
  - determining whether said web server is accessed from said second request.
9. The method as recited in claim 8, wherein if said web server is accessed from said second request then the method further comprises the steps of:
  - waiting for a second period of time, wherein said first period of time is less than said second period of time; and
  - checking status of said attempted second connection by issuing a third request to said Internet gateway to access said web server utilizing said protocol blocked under said logged off status.
10. The method as recited in claim 8, wherein if said web server was not accessed from said second request then the method further comprises the step of:
  - automatically attempting to establish a third connection to said Internet gateway.

11. The method as recited in claim 1, wherein said protocol is a HyperText Transport Protocol.
12. The method as recited in claim 1, wherein said protocol is a file transfer protocol.
13. The method as recited in claim 1, wherein said protocol is a telnet protocol.
14. A system, comprising:
  - a processor;
  - a memory unit storing a computer program operable for automatically restoring logon connectivity in a network system;
  - an input mechanism;
  - an output mechanism;
  - a bus system coupling the processor to the memory unit, input mechanism, and output mechanism, wherein the computer program comprises the programming steps of:
    - establishing a first connection between one or more clients and an Internet gateway;
    - checking status of said first connection by issuing a first request to said Internet gateway to access a web server utilizing a protocol blocked under a logged off status;
    - determining whether said web server is accessed from said first request; and
    - automatically attempting to establish a second connection between said one or more clients and said Internet gateway if said web server was not accessed from said first request.



15. The system as recited in claim 14, wherein if said web server was accessed from said first request then the computer program further comprises the programming steps of:

waiting for a first period of time; and

checking status of said first connection by issuing a second request to said Internet gateway to access said web server utilizing said protocol blocked under said logged off status.

16. The system as recited in claim 15, wherein upon said attempting to establish said second connection between said one or more clients and said Internet gateway the computer program further comprises the programming steps of:

waiting for a second period of time, wherein said second period of time is less than said first period of time; and

checking status of said attempted second connection by issuing a third request to said Internet gateway to access said web server utilizing said protocol blocked under said logged off status.

17. The system as recited in claim 14, wherein said first connection is established by a first logon procedure.

18. The system as recited in claim 17, wherein said step of attempting to establish said second connection comprises the programming steps of:

terminating said first logon procedure; and

executing a second logon procedure.

19. The system as recited in claim 18, wherein the computer program further comprises the programming step of:

waiting for a first period of time.

20. The system as recited in claim 19, wherein the computer program further comprises the programming step of:

checking status of said attempted second connection by issuing a second request to said Internet gateway to access said web server utilizing said protocol blocked under said logged off status.

21. The system as recited in claim 20, wherein the computer program further comprises the programming step of:

determining whether said web server is accessed from said second request.

22. The system as recited in claim 21, wherein if said web server is accessed from said second request then the computer program further comprises the programming steps of:

waiting for a second period of time, wherein said first period of time is less than said second period of time; and

checking status of said attempted second connection by issuing a third request to said Internet gateway to access said web server utilizing said protocol blocked under said logged off status.

23. The system as recited in claim 21, wherein if said web server was not accessed from said second request then the computer program further comprises the programming step of:

automatically attempting to establish a third connection to said Internet gateway.

24. The system as recited in claim 14, wherein said protocol is a HyperText Transport Protocol.

25. The system as recited in claim 14, wherein said protocol is a file transfer

protocol.

26. The system as recited in claim 14, wherein said protocol is a telnet protocol.

40. A computer program product having a computer readable medium having computer program logic recorded thereon for automatically restoring logon connectivity, comprising:

- programming operable for establishing a first connection between a client and an Internet gateway;

- programming operable for checking status of said first connection by issuing a first request to said Internet gateway to access a web server utilizing a protocol blocked under a logged off status;

- programming operable for determining whether said web server is accessed from said first request; and

- programming operable for automatically attempting to establish a second connection to said Internet gateway if said web server was not accessed from said first request.

41. The computer program product as recited in claim 40, wherein if said web server was accessed from said first request then the computer program product further comprises:

- programming operable for waiting for a first period of time; and

- programming operable for checking status of said first connection by issuing a second request to said Internet gateway to access said web server utilizing said protocol blocked under said logged off status.

42. The computer program product as recited in claim 41, wherein upon said attempting to establish said second connection to said Internet gateway the computer program product further comprises:

programming operable for waiting for a second period of time, wherein said second period of time is less than said first period of time; and

programming operable for checking status of said attempted second connection by issuing a third request to said Internet gateway to access said web server utilizing said protocol blocked under said logged off status.

43. The computer program product as recited in claim 40, wherein said first connection is established by a first logon procedure.

44. The computer program product as recited in claim 43, wherein said programming step of attempting to establish said second connection comprises the programming steps of:

terminating said first logon procedure; and  
executing a second logon procedure.

45. The computer program product as recited in claim 44 further comprising:  
programming operable for waiting for a first period of time.

46. The computer program product as recited in claim 45 further comprising:  
programming operable for checking status of said attempted second connection by issuing a second request to said Internet gateway to access said web server utilizing said protocol blocked under said logged off status.

47. The computer program product as recited in claim 46 further comprising:  
programming operable for determining whether said web server is accessed from said second request.

48. The computer program product as recited in claim 47, wherein if said web server is accessed from said second request then the computer program product

further comprises:

programming operable for waiting for a second period of time, wherein said first period of time is less than said second period of time; and

programming operable for checking status of said attempted second connection by issuing a third request to said Internet gateway to access said web server utilizing said protocol blocked under said logged off status.

49. The computer program product as recited in claim 47, wherein if said web server was not accessed from said second request then the computer program product further comprises:

programming operable for automatically attempting to establish a third connection to said Internet gateway.

50. The computer program product as recited in claim 40, wherein said protocol is a HyperText Transport Protocol.

51. The computer program product as recited in claim 40, wherein said protocol is a file transfer protocol.

52. The computer program product as recited in claim 40, wherein said protocol is a telnet protocol.

**EVIDENCE APPENDIX**

No evidence was submitted pursuant to §§1.130, 1.131, or 1.132 of 37 C.F.R. or of any other evidence entered by the Examiner and relied upon by Appellants in the Appeal.

**RELATED PROCEEDINGS APPENDIX**

There are no related proceedings to the current proceeding.